

**REGULAR MEETING OF THE
BRIGHAM CITY COUNCIL
NOVEMBER 5, 2009**

PRESENT:	Lou Ann Christensen	Mayor
	Bruce Christensen	Councilmember
	Scott Ericson	Councilmember
	Reese Jensen	Councilmember
	Ruth Jensen	Councilmember
	Dennis Fife	Mayor Elect
ALSO PRESENT:	Dave Burnett	Interim Public Power Director
	Mark Bradley	City Planner
	Mary Kate Christensen	City Recorder
	Nancy Jo Green	Senior Center Director
	Jared Johnson	Community Development Manager
	Paul Larsen	Economic Development Director
	Bruce Leonard	City Administrator
	Jason Roberts	Finance Director
	Paul Tittensor	Chief of Police
EXCUSED:	Bob Marabella	Councilmember

Mayor Christensen called the meeting to order. The Reverence Period was given by Paul Larsen. The scouts in the audience led the Pledge of Allegiance. Mayor Christensen presented the agenda as follows:

**PUBLIC COMMENT
CONSENT**

Appointment to the Citizen Corps Council
Appointment to Community Emergency Response Team Council

PUBLIC HEARING

Intent to Surplus Real Property Located Immediately South of the Mantua L.D.S. Church House at 238 Willard Peak Road

SCHEDULED DELEGATION

Request to Use Community Center on Sundays for Church Services
Resolution Designating a Voluntary Assessment Area for the Purpose of Levying Assessments Against Properties Within the Voluntary Assessment Area to Finance Telecommunication Connection Fees and Related Matters Interlocal
Agreement Between Brigham City and Utah Telecommunication Open Infrastructure Agency (UTOPIA)
Resolution Designating a Voluntary Assessment Area for the Purpose of Levying Assessments Against Properties Within the Voluntary Assessment Area to Finance Telecommunication Connection Fees and Related Matters
Ordinance Confirming an Assessment List and Levying an Assessment Against Certain Properties in the Voluntary Assessment Area No. 2009-1 to Finance the Costs of Acquiring and Constructing Improvements and Facilities to Connect Properties to the UTOPIA Fiber-Optic Network
Resolution Detailing Financial Options for Complete Build of Fiber Optic Network

NEW BUSINESS

Amendment to the City's Six-Year Capital Projects Plan to Include a Neighborhood Improvement Project and Box Elder Community Food Pantry Project

UNFINISHED BUSINESS

Report on Pedestrian Flag Cross Walk Pilot Program

PLANNING COMMISSION BUSINESS

Request for Zone Change from A-5 (Agricultural District) to R-M-30 (Multiple Resident District on 6.05 Acres and A-5 (Agricultural District) and GC (General Commercial) to GC (General Commercial) on Approximately 2.36 Acres in the General Area of Georgia Drive and 1000 West
Amendment to Section 25.04, Final Subdivision Applications, Extension of Final Plat Approval Prior to Recording

OTHER BUSINESS

GIS Work Session (*added*)

Residential Landscape Ordinance Work Session (*added*)

Councilmember Reese Jensen made a motion to approve the agenda as amended. The motion was seconded and carried unanimously.

PUBLIC COMMENT

Kris Powers - Ms. Powers said she understands that UTOPIA will be paid for by the service providers who will be using the service that Brigham City owns. Obviously, there would not be as much revenue if the entire City does not have access to the infrastructure. The City has pledged a 33-year bond that will have to be paid for. The more individuals and businesses who have access to the infrastructure will generate more revenue. If the infrastructure is built in only parts of the City, how will individuals who purchase a home in an area that is not complete be able to get it? How will current homeowners get it when they realize they want it? How will future businesses be able to get it? How about the existing businesses that might benefit from it in a few years, how will they be able to get it? How will the people that signed up for fiber optics react when they are told that they will not be receiving it? They believed in the project; they trusted that the City would make sure everyone had access. Do we only plow snow on the streets where the majority of the cars drive? No, all streets are plowed regardless of how many cars drive on it. This is City infrastructure, therefore, the entire City has the right to have access to it. It is imperative that Brigham City has something that other cities can't offer to attract businesses to locate here. There has to be growth or Brigham City will become stagnate and dry up.

Lori Hunsaker - Ms. Hunsaker agreed with Ms Powers' comments. There is no reason to build it half way. She applauded the Council for looking at a way to build out for the entire City. It is the only way it is going to work. She added that she would like to see the City have more hands on with UTOPIA. She has listened to UTOPIA make assurances with the first bond and with the second bond. We have not seen anything that these assurances have been met. She said she is discouraged and has lost some faith with them. She hopes to see the City be more involved to move this forward.

Mike Christopherson - Mr. Christopherson is an attorney with Stoel, Rives in Salt Lake City and represented Qwest. He wanted to lodge a formal objection to the designation resolution and the assessment ordinance on the agenda. He expressed concerns about the process by which they have come before the Council. Qwest just became aware of the agenda and the items being on the agenda in the last 24 hours. They have only been able to look at the acknowledgment, consent and waiver that has been signed by a number of residents. This document states that the ordinance and resolution were attached and were received and reviewed by the those who signed the agreement. They have not seen those attachments and through repeated attempts have not been able to get copies of what the residents received. Either they never received them and signed the agreement or they were refused to be provided to Qwest, or they were reviewed by residents and now they are being amended right up to this meeting. They are also concerned about what residents have been told about what their options are for internet and telecommunications service and if they were told they may be violating their mortgage documents by agreeing to encumber their property with an assessment of this nature. They understand the City is trying to use the volunteer assessment area and the consent and waiver form to bypass public hearing and public comment opportunities. They think this is inappropriate. They requested that no action be taken on these items until Qwest and the residents have had an opportunity to review and confirm some of these concerns.

Ken Sutton - Mr. Sutton stated that he is the local ISP in Brigham City. From the beginning he has been an opponent of UTOPIA mainly because he didn't have the information and facts to realize how it was going to be financed. As an Internet provider, his option to provide high speed service to anyone in Brigham City is he has to get a line from a private company and lease that line. They make it just about impossible for him to compete in the market with them because they have priced the line slightly below what their price is. He cannot be competitive, especially in a small market. He said it was refreshing to talk with UTOPIA and find out that everyone that is on the UTOPIA fiber pays the same price to UTOPIA. This gives him the flexibility to reduce his price and compete with everyone else, even those in Salt Lake City. This benefits the citizens because they will get a better price and better service. He can compete with Comcast and Qwest. He added that if the entire City is not built out it will increase the time it will take to pay for the infrastructure.

Larry Terry - Dr. Terry said several years ago he was in favor of a bond to bring high speed fiber optics to Brigham City residents and businesses. He is still in favor of it but have been disappointed a number of times. The citizens have been told almost yearly that build out of the system was imminent, only to be frustrated by further costs and delays. He attended a recent UTOPIA open house where UTOPIA representatives and Mayor Christensen announced that service had finally arrived. He was encouraged and excited that it has happened, only to find out that his area of town had too low of a take rate. He was told by UTOPIA representatives that he should have done a better job of encouraging his neighbors to sign up. His neighbors are intelligent people and for various reasons have elected not to sign up. He does not believe that UTOPIA is for everyone. Therefore, he is in favor of user connection fees to help subsidize this project. He strongly felt that those who want UTOPIA should have the ability to get it. That is what was promised when the bond was issued. He was frustrated that the City and UTOPIA are even considering not allowing all the residents the opportunity for a connection. As a resident and business owner in Brigham City the responsibility for a bond payment falls on him as a taxpayer should UTOPIA be unsuccessful. He resented the fact that even with the potential tax burden on a 33-year bond he may still not be allowed the service. He strongly encouraged the Council to allow all those, wherever they live in the City, to be given the opportunity for a connection. He understood that there is some frustration with how UTOPIA has been managed; however, given that the City is where they are, he did not want the City to be more divided. He asked the Council to vote in favor of the resolution to allow all citizens the opportunity for this service.

Eric Isom - Mr. Isom stated that he works for Qwest as the Government Affairs Director. He asked what the residents were told to induce them to sign the Acknowledgment, Waiver and Consent, and to commit no more than \$25/month and not more than \$3,000 total. Were they told UTOPIA was the only way to enjoy fiber services in Brigham City? Were they shared accurate information about pricing by service providers over UTOPIA's network and by other private sector competitors? Twenty-five dollars is a significant amount to pay on top of competitively priced services. He stated that Qwest started fiber to the node in late 2007. The first full year of fiber to the node employment was in 2008. They are currently in their second full year. They are providing advanced services with download speeds of up to 20 megabytes per second from Provo to Ogden and have been evaluating potential fiber to the nodes in Brigham City. In July Qwest announced the ability to deliver up to 40 megabytes per second of download speed and up to 20 megabytes per second of upload speed to residential and small business customers. Initial roll out of these services will be on a limited basis in certain locations, including Salt Lake City. Qwest intends to provide fiber to the node to as many of the state as it is economically feasible to do so. They have never said they will not bring fiber to the node to Brigham City. If that is being stated about Qwest, it is not accurate. In fact, they have been evaluating fiber to the node in Brigham City and their intent is to provide fiber to the nodes in Brigham City and their intent is to provide fiber to the node in some areas in Brigham City in 2010. However, if Brigham City chooses to create a Special Assessment Area, the City is in affect saying to private industry that they have decided to create a City financed public monopoly and Qwest cannot compete with a competitor which is subsidized in this way. They would not employ in an area where an SAA is recreated. The City is recreating a challenging situation for competitive investment because if residents choose to encumber their property they are essentially obligating themselves to take services through the UTOPIA network. The government should not use tax dollars to further subsidize UTOPIA. If UTOPIA fails the homeowners will still be left with an assessment on the property. The track record of UTOPIA over the last five years indicates that this is an unwise decision. UTOPIA has consistently underestimated costs and overestimated take rates. He asked whether Brigham City residents fully understand the risk they assume if they enter into this agreement.

Steve Hansen - Mr. Hansen owns a business downtown and is a supporter of UTOPIA. He stated that he was never misled on any of the information he received regarding the costs associated with UTOPIA. He lives in the part of town that has been undeveloped for three decades, the old Intermountain Indian School properties. Unless fiber optic is brought to that area he did not think the property will ever be developed. It's important that any business that relocates to Brigham City has fiber optic as an option. He encouraged the Council to consider building out the entire City.

Louay Chebib - Mr. Chebib is a resident of Brigham City and also an online instructor and student, and a technical person for the last 40 years. He stated that he came to Brigham City 15 years ago and all that was available was dial up. It was so slow because nobody wanted to come here. Qwest didn't get to Brigham City with high speed internet until another company distributed wireless to the City and Comcast came in. As soon

as Comcast and Qwest came in, they decided to fight each other. This did not happen until after UTOPIA was announced.

Bonnie Germer - Ms. Germer asked what happens if UTOPIA fails and it has driven out the competition? What if others don't come back in? She felt it has failed in the last several years because the City contracted with them, they contracted with Brigham City. The City cannot go back on the contract, yet they have gone back on theirs. She did not think Brigham City can afford this. She realizes that everyone says the City cannot back out now because they are in it too deep. How deep is too deep? When the other companies are run out because of fair competition, this is what the federal government is doing with health insurance. She felt it is a take over. She asked if citizen's phone numbers will remain the same. She has been told by some residents in Tremonton that the reason some of them have not signed up for it is because they cannot have their same phone numbers. She has also been told that when Tremonton residents call the Tremonton hospital it is a long distance number.

Jerry Ohman - Mr. Ohman said he was born in Brigham City. When he was growing up in Brigham City there was a population of 4,500. It was a City of orchards. In the farm areas there were tomatoes, peas and corn. Del Monte had a big packing plant on 800 West. There were several packing plants throughout the City. There were pea vines on every block from here to Malad, Idaho. They are all gone. Things change. In the 1960s Mayor Eskelsen thought the City needed more water due to Thiokol coming to the area so they put in a dam. Members of the community were split, some saying the dam was not needed and others saying it was. Now we have plenty of water due to people being able to look ahead and see what was needed. Modifications were also made to the power plant and there was an element of residents that said nothing should be done. But they did it and Brigham City residents do not experience power outages. When he was growing up they had outhouses. When plumbing was installed in houses people did not want that stink in their house. Mr. Ohman said he owns 30 homes in Brigham City. He has signed every one of those houses up for UTOPIA because he has talked to Qwest and they have sued UTOPIA and they are the reason it has taken so long to get UTOPIA in Brigham City.

Chad Brazelton - Mr. Brazelton is a life long resident of Brigham City. He has been on the line between UTOPIA and the other companies. Qwest talked about fiber optics in Brigham City. He questioned whether they would be doing that if UTOPIA wasn't already trying to do so. He has been a UTOPIA customer since April and he has been highly impressed and is glad he was able to get it. Regarding the \$25/month fee, a single telephone line without long distance still costs \$40. The concern was brought up about driving out the competition. He did not think this will happen. There are several companies that offer telephone services and other services and UTOPIA is not stepping on their toes, and they are not complaining about it. The community can see the potential of UTOPIA.

Mayor Christensen stated that these comments and questions will be addressed during the UTOPIA issues on the agenda.

CONSENT

Appointment to the Citizen Corps Council

George Fuller was recommended to be appointed to the Citizen Corps Council.

Appointment to Community Emergency Response Team Council

Larry Henington was recommend for appointment to the Community Emergency Response Team Council.

MOTION: A motion to approve the Consent Agenda was made by Councilmember Christensen, seconded and carried.

PUBLIC HEARING

Intent to Surplus Real Property Located Immediately South of the Mantua L.D.S. Church House at 238 Willard Peak Road

Mr. Leonard explained that a public hearing is required before a municipality can surplus property. This property is a vacant parcel of property containing approximately 4.16 acres. It is zoned residential.

A motion to open the public hearing was made by Councilmember Christensen, seconded and carried.

Randy Pulsipher - Mr. Pulsipher is a resident of Mantua and a member of the Mantua Town Council. He explained that the LDS Church parking lot was increased which took out a large play area. The Mantua Council would like to create another park on this surplus property. Mantua would take responsibility and liability for it. He requested that Brigham City grant it to Mantua or negotiate a lease.

There were no further comments from the public. A motion to close the public hearing was made by Councilmember Christensen, seconded and carried.

MOTION: Councilmember Ericson made a motion to table this to take Mantua's request into consideration and discuss it at another meeting. The motion was seconded by Councilmember Reese Jensen and unanimously carried.

SCHEDULED DELEGATION

Request to Use Community Center on Sundays for Church Services

Mr. Cooper Abrams came forward. Mr. Abrams explained that he is a Baptist missionary church planter and has been working in Utah for 23 years. He has established churches in Beaver, Price and Tremonton. They are considering starting a new Baptist Church in Brigham City. They use the senior centers in both Price and Tremonton. They would meet on Sundays from about 9:30-12:30 and again in the evenings from 6:00-7:30. They are very conscious of the building. It has been their practice to clean everything so it is better than when they started their meetings. They do not need to use the maintenance service of the building. They would like to start using the building in January. It has taken as long as two years, but probably closer to six months. They are currently looking at property to build a church in Brigham City.

Mr. Leonard said the City's policy that the Senior Center cannot be rented on Sunday is for single event use. He suggested the Council consider a lease with Mr. Abrams. This policy was put in place because of the extra cost for the City to bring in custodial service when events were held on Sundays. Mr. Abrams has stated that he will not need custodial services.

Mr. Abrams said they are willing to pay a lease or rental fee for use of the building.

MOTION: Councilmember Reese Jensen made a motion to table this item and schedule an executive session to consider a lease. The motion was seconded by Councilmember Ruth Jensen and carried.

Resolution Designating a Voluntary Assessment Area for the Purpose of Levying Assessments Against Properties Within the Voluntary Assessment Area to Finance Telecommunication Connection Fees and Related Matters

Mayor Christensen and staff addressed the following issues and questions brought up during the Public Comment Period.

Did citizens receive correct information when signing the agreement, are they violating mortgage documents? - Mr. Dave Shaw from the law firm Kirton and McConkie, representing UTOPIA, asked if a citizen of Brigham City signs a document saying they want their property to be assessed on a voluntary basis should they be allowed to do so by the City Council? It is an assessment being levied by the people against themselves, not by the City against the people. It is not a mandatory special assessment area, it is voluntary. The citizens that sign the documents are saying that they want the assessment and are asking the City to do so. It is presumed that they know what they are doing when they ask to be assessed. They have been fully advised of the

document and have had every opportunity to review. They have also had an opportunity to rescind it and will continue to do so until the bonds have been issued. This contract was prepared by an attorney and has been prepared in accordance with the Special Assessment Area Act of the State of Utah.

Mr. Blaine Carlton, bond counsel from the law firm of Ballard, Spahr, Andrews and Ingersoll, explained that State Statute is very clear that an assessment lien is a first lien against the property in the sense that a tax lien is a first lien. The reason it can take priority over an outstanding mortgage is because the premise of the Assessment Area Act is that the assessment adds value to the property. From the lender's perspective the assessment is not distracting from their mortgage lien.

Were the prices of other service providers given to citizens accurate; concerns on the waiver and consent form; fiber to the node concerns - Mr. Todd Marriott, Executive Director of UTOPIA, explained that citizens' services will be less money because of the assessment fee. For example, if a citizen's services was \$75 for a double play, it will typically be in the \$50 range. They shared several options to the citizens, including pricing options for several service providers.

Fiber to a node is exactly that, fiber to a location. Then it is copper disseminated to the home. Fiber to the node is an aggregated technology, so many people use it and it is over prescribed. It is what service providers use because fiber to the home is very expensive. He invited Qwest to join the UTOPIA infrastructure which would provide their customers with fiber to the home.

UTOPIA is a public monopoly - Mr. Marriott said it is not a monopoly, it is an infrastructure, similar to the City's sewer and electric. UTOPIA offers no services, other service providers can sign onto the infrastructure and provide service to Brigham City residents.

What will happen if UTOPIA fails and all the competition is drive out? - Mr. Marriott explained that UTOPIA is a pioneering effort and is leading edge. As they continue to promote plans and strategies the City is obligated is to continue its obligations. They are not a private company. Brigham City will go forward to be one of the most connected cities in the world. They will continue on and be the infrastructure staff for the UTOPIA cities.

Phone issues in Tremonton - Mr. Marriott explained that these issues were because Tremonton is serviced by Frontier. If it is a long distance call to the other end of town, they have fiber and there is no long distance charges. He agreed that there have been issues in Tremonton. Tremonton knew there would be issues, yet they wanted UTOPIA in their community. There was a significant take rate in Tremonton and they are asking for more deployment.

Mr. Shaw stated regarding phone numbers, several years ago the Public Service Commission mandated number portability. Frontier has not cooperated in that and UTOPIA has not pursued legal action. According to law, all providers are required to port numbers.

Brigham City is obligated to pay the sales tax pledge no matter what happens - Mr. Shaw stated that the tax pledge will not be required unless there is not enough revenue to pay UTOPIA's bond debt obligations. If there is not, there is a reserve fund set aside that has been funded by the cities which would be drawn on first. The cities would be obligated to replenish that fund to the amount that it is drawn down on an annual basis. The City will receive a 365-day notice of any draw down so it can be budgeted. To date, this has not occurred. Mayor Christensen asked Mr. Shaw to verify that Brigham City has not paid any money to UTOPIA. Mr. Shaw stated that Brigham City has not paid anything to UTOPIA. Monies that were put in for the preliminary assessment and feasibility studies were reimbursed by UTOPIA. Brigham City did not pay for either of these studies because they had already done their own up front. To date, UTOPIA cities have not put in any cash other than the amount set aside in their reserve fund, and this has not been called upon.

Councilmember Ruth Jensen said Mr. Marriott told the Council a short time ago that there would need to be at least 50,000 subscribers to maybe, in five years, stop asking for the pledge money. Mr. Marriott said they have discussed hypotheticals on a regular basis. It is not a matter of subscribers. They are now seeing a lot of commercial accounts which helps subsidize revenue. UTOPIA is not a money making entity, they simply try to cover their operating costs. Councilmember Ruth Jensen said UTOPIA said they would start drawing on the reserve in January 2010. Mr. Marriott said if that happens, that is what it was set aside for, to help subsidize

the infrastructure. If this is required, it will occur over time until UTOPIA is able to cover its operating costs from subscriber revenues.

Mayor Christensen explained that other issues brought forward during the Public Comment period will be addressed throughout the remaining discussions.

Mr. Carlton stated that this resolution outlines what the purpose of the designation of the assessment area is, the improvements to be financed and also outlines the estimated costs of construction as well as the method of assessment and the not-to-exceed amount of the assessment. The boundaries of the assessment area in this resolution are the boundaries of the City, which means anyone in the City could be part of the assessment area. However, this is a voluntary assessment area so only those people who want their property to be a part of the assessment area will have their property assessed for these improvements.

Laura Lewis from the financial office of Lewis & Young stated that the total acquisition cost of improvement including overhead costs and costs of funding a reserve fund is estimated not to exceed \$5,515,924 of which the City intends to pay \$655,384 and \$50,000 shall be paid from other sources, leaving a balance of \$4,810,540 to be paid by assessments. The reason there is only an estimate in the resolution is so other citizens can be added to the assessment up to December 7. The construction costs will increase and the City's contribution will decrease as additional people sign up. These numbers are based on the assumption that the entire City will be built out. He suggested going through each of the resolutions before approving this resolution.

MOTION: After discussing all three resolutions, Councilmember Reese Jensen made a motion to approve the resolution designating a volunteer assessment area for the purpose of levying assessments against properties within the voluntary assessment area to finance telecommunication connection fees and related matters. The motion was seconded by Councilmember Ericson. Councilmember Ericson, Councilmember Christensen, Councilmember Reese Jensen voted aye. Councilmember Ruth Jensen voted nay. The motion carried 3-1.

Resolution Detailing Financial Options for Complete Build of Fiber Optic Network

Mr. Carlton explained that this resolution would authorize complete build out of the City with fiber optic infrastructure. They would have to contribute monies to assure that all property owners that have voluntarily consented to be included in the assessment area would be connected to the network. If this is approved the City will have to make up the cost difference. The City is basically up fronting the money so the entire City can be built out. When future customers sign onto the system a portion of their \$3,000 would go toward paying back the City for up fronting the money. However, if not one other person signs up, the City may not get any money. In addition, the amount will become significantly lower if more people sign up within the 25-day time period. If a significant amount of people sign up, the assessment for everyone would be lower. If this is not done approximately 40% of those who have signed on will be left out, which would be approximately 600 households out of 5,600 households in Brigham City. Councilmember Reese Jensen said in addition to those 600 households there are all the households that haven't signed on yet but may want to in the future. If this resolution is not approved they will not have that opportunity and future households and businesses would not be able to sign up.

Councilmember Ruth Jensen said she did not doubt the technology; however, she doubted the management and the people that are running UTOPIA. They have essentially dumped this on the City's lap and said make it happen. She felt this was wrong. There have been only 1,640 people sign up for this service. There are approximately 5,600 households. This means that only 27% of the citizens want this service. She said \$5.5 million along with the pledge money is a lot of money for this service. She is not confident UTOPIA is going to come through. It has been seven years since this started and nothing has happened. They are always wanting more from the citizens and from the City. She said the people that are managing UTOPIA have no business in telecommunications. The reason the large telecommunications couldn't provide fiber optics is because it costs a lot of money.

Mayor Christensen explained that she has been working on UTOPIA for many years and she feels passionate about it. In 2002 the Telecommunications Task Force talked to all the telecommunications providers and asked

if they would bring fiber optics into the County. All of them said Box Elder County did not have the population base to justify the expense. At the same time UTOPIA was being formed in the Salt Lake area and that is why Brigham City joined UTOPIA.

Councilmember Ruth Jensen said she does not question the technology, she questioned the management and the manner in which they have implemented the other financing upon the City and the citizens.

Mr. Todd Marriott responded by saying that there is not hardly anyone in UTOPIA management that was there 18 months ago. In that time they have signed up five times as many service providers. They have implemented business models that have made it possible for this to move forward. In the past there were some administrators who were not telecommunication experts who oversaw entities. Eighteen months ago new management was brought in that are telecommunication experts. It has been a formidable task with the tools that they had. He attended a conference in Dallas where they bragged about 18% take rates, so a 27% take rate is incredible. There are businesses that will move only where there is fiber optic.

MOTION: Councilmember Reese Jensen made a motion to approve the resolution detailing financial options for complete build of fiber optic network. The motion was seconded by Councilmember Christensen. Those voting aye: Councilmember Ericson, Councilmember Reese Jensen and Councilmember Christensen. Councilmember Ruth Jensen voted nay. The motion carried 3-1.

Ordinance Confirming an Assessment List and Levying an Assessment Against Certain Properties in the Voluntary Assessment Area No. 2009-1 to Finance the Costs of Acquiring and Constructing Improvements and Facilities to Connect Properties to the UTOPIA Fiber-Optic Network

Mr. Carlton explained that this ordinance levies the assessment. It outlines the method and rate of the assessment against the property owners and gives the total estimated cost to date. It also explains the payment process. Once the assessment ordinance is adopted and published, property owners have 25 days to prepay their assessment without paying any interest and it would be less than what they would otherwise be assessed because there would be no reason to fund a reserve fund. If the property owner chooses not to pay the full amount they can pay in monthly installments not to exceed \$25 for up to 240 months. The first payment is scheduled to be due in June 2010. Under this option interest would be charged on assessments because the City will issue assessment bonds and there will be an interest charged on these bonds. The interest rate would be the same as the bonds plus a small administration fee that would be incurred by the City. If a resident does not prepay during the 25-day prepay period, they will make monthly payments.

If a property owner does not prepay within the 25-day period and later wants to pay the assessment early, they can do this but they will need to pay interest on the assessment amount to the next interest payment date on the assessment bonds. In addition, there may or may not be an additional premium to make sure the City collects enough money to pay the bonds off when they become callable.

The ordinance also addresses what happens if a property owner fails to pay the assessment. State law allows municipalities to foreclose on the property for purposes of collecting the assessment. Mr. Carlton felt that because the assessments are only \$25/month the City would use this only as a last resort. The lien on the property is equivalent to a tax lien.

There is a right of rescission provision in the ordinance which allows anyone that signed an acknowledgment waiver and consent and would like to cancel it has three days to do so.

MOTION: Councilmember Reese Jensen made a motion to approve the ordinance confirming an assessment list and levying an assessment against certain properties in the Voluntary Assessment Area No. 2009-1 to finance the costs of acquiring and constructing improvements and facilities to connect properties to the UTOPIA fiber optic network. The motion was seconded by Councilmember Christensen. Voting was as follows: Councilmember Christensen, Councilmember Ericson and Councilmember Reese Jensen voted aye; Councilmember Ruth Jensen voted nay. The motion passed 3-1.

Interlocal Agreement Between Brigham City and Utah Telecommunication Open Infrastructure Agency

Mr. Shaw explained that this agreement is the operating arm to bring UTOPIA into fruition and designates UTOPIA as the agent to manage the construction, the acquisition, the operation etc. It also contemplates a future agreement between parties on the use of the infrastructure which is being financed and UTOPIA's operation of the infrastructure. It also clarifies that the improvements to be operated by UTOPIA will be for the purpose of an open network available to all qualifying service providers.

Mr. Shaw stated that once the SAA is approved and the bond is approved, the network becomes the property of Brigham City Corporation. The City can participate in the process of contracting with the construction company as desired. Mr. Carlton stated that once the bonds are issued the proceeds of the bonds will go into a construction fund, which will be held by a bank trustee, and would be dispersed upon requisitions signed by the municipality as well as UTOPIA. The City will be actively involved in overseeing the project as it is built out to make sure that everything is being done correctly and in time.

MOTION: Councilmember Ericson moved to approve the Interlocal Agreement between Brigham City and UTOPIA, Councilmember Reese Jensen seconded the motion. Councilmembers Christensen, Ericson and Reese Jensen voted aye; Councilmember Ruth Jensen voted nay.

NEW BUSINESS

Amendment to the City's Six-Year Capital Projects Plan to Include a Neighborhood Improvement Project and Box Elder Community Food Pantry Project

Mr. Roberts reported that this amendment includes the Neighborhood Improvement Project and the Box Elder Community Food Pantry Project as discussed during the public hearing at the October 29 Council meeting. This allows them to apply for the CDBG grants that will be administered through the City.

MOTION: Councilmember Christensen made a motion to amend the City's Six-year Capital Projects Plan to include a Neighborhood Improvement Project and Box Elder Community Food Pantry Project

The Council took a break and returned at 9:40 p.m.

PLANNING COMMISSION BUSINESS

Request for Zone Change from A-5 (Agricultural District) to R-M-30 (Multiple Resident District on 6.05 Acres and A-5 (Agricultural District) and GC (General Commercial) to GC (General Commercial) on Approximately 2.36 Acres in the General Area of Georgia Drive and 1000 West

Mr. Bradley came forward and stated that the extension of Georgia Drive will eventually divide these properties, which will have two different zones. The request is consistent with the General Plan.

MOTION: Councilmember Christensen made a motion to approve the zone change from A-5 to R-M-30 and from A-5 and GC to GC. The motion was seconded by Councilmember Reese Jensen. Voting was unanimously in favor.

Amendment to Section 25.04, Final Subdivision Applications, Extension of Final Plat Approval Prior to Recording

Mr. Bradley explained that when this was first presented to the Council in July, the Council wanted language that was more consistent on the reasons for extending final plat approval. The new language states, "an extension may be granted only if the City Council or City Planner, as applicable, can find that the applicant(s) inability to record the final plat is due to the circumstances beyond the applicant's control, such as significant health issues, economic decline, natural disaster, or action caused by the City or other public agencies resulting in a time delay." This would be a one time extension for six months.

MOTION: Councilmember Reese Jensen made a motion to approve the amendment to Section 25.04, Final Subdivision Applications, Extension of Final Plat Approval Prior to

Recording. The motion was seconded by Councilmember Ruth Jensen. All councilmembers voted aye.

OTHER BUSINESS

GIS Work Session

The Council scheduled a work session to demonstrate things that have been done in the GIS Department for November 19 at 6:00 p.m.

Work Session to Discuss the Landscaping and Open Space Ordinance for Multiple Residential

A work session was scheduled for December 3 to discuss this ordinance.

A motion to adjourn to a Redevelopment Agency was made by Councilmember Ruth Jensen. The motion was seconded and carried unanimously. The meeting adjourned at 10:00 p.m.